IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 233 OF 1988
With
CIVIL APPLICATION NO. 3938 OF 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge and the Appellate Judge ?

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REVACHAND LAUMAL LALWANI - Appellant(s)
Versus
BARODA MUNICIPAL CORPORATION & ANR. - Respondent(s)

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Appearance :
Shri S.D. Suthar for Shri N.K. Majmudar for Appellant(s).
Shri Pranav G. Desai for Respondent No.1.
None for Respondent No. 2 though served.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 02/03/2007

ORAL JUDGMENT

1. The short facts necessary for disposal of the Second Appeal are that the plaintiff filed a suit submitting, *inter alia*, that he was

allotted some land admeasuring 5 ft. x 5 ft. at a particular place and after some time, the Municipal Corporation expressed its intention to develop a complex at the very same place in the name and style of "Padmavati Complex". Number of persons, who were having permissions to have their kiosks/wheel-carts, were asked to move from the place; they were allotted some place at Sursagar and with some of the occupants, the Municipal Corporation entered into some agreement for allotment of some area in the newly built Padmavati Complex. According to the plaintiff, after the complex was constructed, number of persons, who were earlier evicted, were brought back, but, the plaintiff was not allotted any room in the said complex.

1.1 According to him, the respondents now propose to dispossess him from the place, but, unless and until an alternative site is provided to the plaintiff, he cannot be evicted from the said place.

1.2 The defendants appeared before the Court and submitted, *inter alia*, that the plaintiff is not their tenant and was not entitled to any of the prayers prayed for by him in the plaint.

1.3 The learned trial Court, after recording the evidence and hearing the parties, dismissed the suit and as the appeal proved futile, the appellant is before this Court.

2. The appeal has been admitted for hearing the parties on the following substantial questions of law:

> *"Whether in the facts and circumstances of the case, the Courts below committed a substantial error of law in not coming to the conclusion that the appellant is the tenant of the*

respondent No.1 and therefore, was entitled to permanent injunction till he was given alternative place in Padmavati shopping centre?"

3. From the very frame of the question, it would appear that the answer to the question would depend upon the fact finding inquiry. The question is whether the appellant is a tenant of respondent No.1 and as such, he is entitled to permanent injunction that till he is given alternative place in Padmavati shopping centre, he cannot be evicted. From the plaintiff's own showing, it would clearly appear that after he was evicted from the site of Padmavati Complex, he did not enter into any agreement with the Corporation, nor the Corporation ever issued him any writing that after the construction of Padmavati Complex, he would be given some place. From the records, it only appears that number of persons, who entered into some agreement with the Corporation, were only given some place in Padmavati Complex.

4. The learned Counsel for the appellant submits that from the receipts issued by the Corporation, it would clearly appear that the appellant was paying the license fee s to the Corporation and under the circumstances, he must be deemed to be a licensee or lessee. The receipts on which strong reliance has been placed, in fact, are not the receipts in relation to the payment of the license fees.

5. One should not be misled by the nomenclature or title of the receipt. In fact, the plaintiff was paying some money for use and occupation of the property belonging to the defendant, if the plaintiff has not entered into any agreement with the respondent nor there is any permission in favour of the plaintiff to occupy the premises at Sursagar, then, it cannot be argued that the plaintiff is a tenant and is entitled to

some alternative site. The two Courts have given cogent reasons for dismissing the suit.

6. Agreeing with the learned Courts below, I am unable to hold that the plaintiff could successfully prove that he being a tenant in the property is entitled to an alternative site and injunction. The appeal deserves to and is dismissed. No costs. Interim relief is vacated. Let a decree be framed accordingly. Consequent upon the dismissal of the appeal, Civil Application No.3938 of 1998 is also dismissed.

[R.S.Garg, J.]

*kamlesh**